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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,186	01/15/2004	Leonard Fuchs	30051/39757	5366
4743 7590 10/16/2007 MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			EXAMINER LEFF, STEVEN N	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 10/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/758,186

Applicant(s)

FUCHS, LEONARD

Examiner

Steven Leff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - The phrase “the current performance status” is rejected as it lacks antecedent basis, and is further rejected as it is unclear if the term refers to the initial status, prior to the first withdrawal, or with respect to the status after the first withdrawal, and prior to the second withdrawal.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Annoni (5650186).

With respect to claims 1-9, Annoni teach a method for controlling a drink preparation machine for preparing a multiple number of different drink units on a hot-water basis (col. 5 line 41+), comprising the steps of withdrawing the hot water for the multiple number of different drink units from a common hot water source (col. 4 line 14+), monitoring the performance status of the hot water source (col. 5 line 6+), and controlling the hot water withdrawal by enabling the hot water withdrawal for all of the multiple number of different drink units at a predetermined full performance status of the hot water (col. 5 line 64+), blocking the hot water withdrawal for all of the multiple number of different drink units at a predetermined zero performance status of the hot water (col. 6 line 1+) and blocking the hot water withdrawal for a first number of predetermined drink units of the multiple number of different drink units and enabling

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hot water withdrawal for a second number of predetermined drink units of the multiple number of different drink units at a predetermined partial performance status of the hot water source (col. 5 line 15+, fig. 7 ref. #157).

It is further noted, with respect to the “partial performance status”, that Annoni further meets the claim limitation “blocking of the hot water withdrawal for a first number of predetermined drink units of the multiple number of different drink units and enabling hot water withdrawal for a second number of predetermined drink units of the multiple number of different drink units at a predetermined partial performance status of the hot water source” where all eight drink units are blocked and where zero of the drink units are enabled since eight, and zero are both numbers as is required by the claim thus establishing a “partial performance status”.

Annoni continues by teaching that the blocking of the hot water withdrawal for the first number of predetermined drink units occurs if the performance status falls below a threshold value (col. 5 line 15+, fig. 4). In addition Annoni teaches that the full performance status comprises a performance range (col. 5 line 54+), and that the partial performance status comprises at least one performance range (col. 5 line 54+) as is evident by the different types of drinks and that the CPU is “programmed to run different separate cycles for the various beverage selections” (col. 5 line 17+).

Further Annoni teaches establishing a performance withdrawal value for each of the multiple number of different drink units, and deducting this performance withdrawal value from the current performance status with each withdrawal (col. 7 line 4+) where the performance withdrawal value is viewed as the desired value(s) necessary for each different drink unit, and thus each time the CPU checks the performance status the CPU is in effect subtracting the required value(s) from the current values and comparing this obtained value with the required value(s) for a specific drink. Annoni continues by teaching heating the water synchronously with the withdrawal (col. 4 line 7+), determining the performance status of the hot water source prior to controlling the hot water withdrawal (col. 5 line 6+), and determining the performance status of the hot water source by determining a level of the water in a boiler (col. 5 line 6+, fig. 5 ref. #157), and/or the temperature of the water in the hot water source (col. 5 line 6+)

- Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Knepler (5111969).

With respect to claims 1-9, Knepler teach a method for controlling a drink preparation machine for preparing a multiple number of different drink units on a hot-water basis (col. 4 line 30+), comprising the steps of withdrawing the hot water for the multiple number of different drink units from a common hot water source (fig. 3 ref. # 34), monitoring the performance status of the hot water source (col. 4 line 32+), and controlling the hot water withdrawal by enabling the hot water withdrawal for all of the multiple number of different drink units at a predetermined full performance status of the hot water (col. 4 line 32+), blocking the hot water withdrawal for all of the multiple number of different drink units at a predetermined zero performance status of the hot water (col. 3 line 50+) and blocking the hot water withdrawal for a first number of predetermined drink units of the multiple number of different drink units and enabling hot water withdrawal for a second number of predetermined drink units of the multiple number of different drink units at a predetermined partial performance status of the hot water source (col. 3 line 64+, col. 4 line 26+, col. 3 line 59+).

It is further noted, with respect to the "partial performance status", that Knepler further meets the claim limitation "blocking of the hot water withdrawal for a first number of predetermined drink units of the multiple number of different drink units and enabling hot water withdrawal for a second number of predetermined drink units of the multiple number of different drink units at a predetermined partial performance status of the hot water source" where zero drink units are blocked and where one of the drink units are enabled since one, and zero are both numbers as is required by the claim, thus establishing a "partial performance status".

Knepler continues by teaching that the blocking of the hot water withdrawal for the first number of predetermined drink units occurs if the performance status falls below a threshold value (col. 3 line 59+). In addition Knepler teaches that the full performance status comprises a performance range (col. 4 line 39+), and that the partial performance status comprises at least one performance range (col. 4 line 39+).

Further Knepler teaches establishing a performance withdrawal value for each of the multiple number of different drink units, and deducting this performance withdrawal value from the current performance status with each withdrawal (col. 4 line 32+) where the performance withdrawal value is viewed as the desired value(s) necessary for each different drink unit, and thus each time the CPU checks the performance status the CPU is in effect subtracting the required value(s) from the current values and comparing this

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obtained value with the required value(s) for a specific drink. Annoni continues by teaching heating the water synchronously with the withdrawal (col. 4 line 15+) as it is noted that the water is heated in the reservoir itself continuously, determining the performance status of the hot water source prior to controlling the hot water withdrawal (col. 3 line 50+), and determining the performance status of the hot water source by determining a level of the water in a boiler (col. 3 line 64), and/or the temperature of the water in the hot water source (col. 3 line 45+)

### ***Response to Arguments***

- Applicant's arguments with respect to the obviousness rejection of claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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DREW BECKER  
PRIMARY EXAMINER  
10-18-07